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Attorneys for Plaintiff,
**JEANNETTE CLARK, individually and
on behalf of those similarly situated**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JEANNETTE CLARK, individually and
on behalf of those similarly situated,

Plaintiff,

vs.

LG ELECTRONICS U.S.A., INC.

Defendant.

Case No.: 3:13-cv-0485-JM-JMA

Judge: Jeffrey T. Miller
Complaint Filed: 12/10/2012

CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR DAMAGES FOR:**

- (1) Violation Of Consumer Legal Remedies Act
- (2) Unlawful Business Practices in Violation of California Business & Professions Code §17200, *et. seq.*
- (3) False & Misleading Advertising In Violation of California Business & Professions Code §17500, *et. seq.*
- (4) Breach of Express Warranty
- (5) Breach of Consumer Warranty Act California Civil Code §1790, *et. seq.*
- (6) Violations Of The Magnuson-Moss Warranty Act

JURY TRIAL DEMANDED

1 Plaintiff JEANNETTE CLARK, (hereinafter “Plaintiff”), on behalf of herself, and
2 on behalf of all other similarly situated persons, allege the following facts and claims:

3 1. This consumer class action arises out of Defendant LG ELECTRONICS
4 U.S.A, INC.’s (“Defendant”) misrepresentations through omission and failure to honor
5 warranties with respect to Defendant’s LG’s refrigerator Model No. LFX31925ST,
6 refrigerators with its Slim SpacePlus™ Ice System, and/or its Smart Cooling Plus
7 System.

8 **JURISDICTION AND VENUE**

9 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)
10 and 18 U.S.C. § 1965. This Court has supplemental jurisdiction over Plaintiff’s state law
11 claims pursuant to 28 U.S.C. § 1367(a) because those claims are so related to Plaintiffs’
12 federal claims that they form part of the same case or controversy between the parties.

13 3. Defendant removed this action from State Court to Federal Court.

14 **THE PARTIES**

15 4. Plaintiff Jeannette Clark is, and at all material time was, a citizen of
16 California and resident in the county of San Diego, California.

17 5. Defendant LG Electronics U.S.A., Inc. is a Delaware corporation with
18 corporate offices at 1000 Sylvan Ave, Englewood Cliffs, NJ, 07632. Defendant
19 maintains a website at <http://www.LG.com/us>.

20 **STATUTES OF LIMITATIONS**

21 6. Any applicable statutes of limitation have been tolled by Defendant’s
22 continuing, knowing and active concealment of the facts alleged herein. Defendant has
23 concealed material information from Plaintiff and the Class that is essential to the pursuit
24 of their claims, despite Plaintiff’s and the Classes’ due diligence.

25 **INTRODUCTION**

26 7. Defendant is in the business of manufacturing, producing, distributing,
27 and/or selling refrigerators throughout the United States under the brand name LG
28 Electronics.

8. Defendant manufactured, produced and/or distributed refrigerators for sale by its network of authorized dealers including several leading retailers in the United States, such as Home Depot, Best Buy, APT, Buy.com, PC Richard & Son, and other large retail chains, as well as through independently owned distributors.

9. On or around the beginning of October 2011, Plaintiff purchased an LG refrigerator, Model No. LFX31925ST,¹ from Home Depot located in San Diego, California. Plaintiff paid approximately \$3,000 for the refrigerator. Plaintiff used the refrigerator in her home for its intended purpose and in a manner consistent with its intended use.

10. The refrigerator has a LG Slim SpacePlus™ Ice System (“Ice System”). The Ice System is located in the interior portion of the door of the refrigerator, giving the refrigerator more storage capacity than other refrigerators. The Ice System makes and stores ice and has an external automatic ice dispenser that allows the consumer to obtain ice without opening the refrigerator door. Plaintiff saw this feature and liked that it provided an in-door automatic ice dispenser without losing storage capacity.

11. The refrigerator also has an LG Smart Cooling Plus System (“SCP”). The SCP is “designed to monitor and maintain conditions to help keep food fresh.” On the date that Plaintiff purchased the refrigerator, the sales person at Home Depot pointed out that one of the features of the refrigerator was that it had different temperature zones in the refrigerator that could be regulated based on what was being stored in the temperature zone. Some of the zones identified were a drawer for meat, a drawer for vegetables, and a drawer for buffet platters. This was one of the features about the refrigerator that Plaintiff liked because it was supposed to help keep food fresh longer. As stated by Defendant in its advertising, “[t]he Linear Compressor and Dual Evaporators [that are part of the SCP] react quickly to humidity and temperature levels and help keep your

¹ The term “Model” will refer to the LG’s Model No. LFX31925ST and not just the refrigerator the Plaintiff purchased.

1 food fresher, longer. Meanwhile, strategically-placed vents in every section help to
2 surround your food with cool, fresh air no matter where you put it.”

3 12. Within one month of owning and operating the refrigerator under normal
4 household conditions, and as recommended by Defendant, the refrigerator began to have
5 problems. The Ice System would repeatedly clog and become non-operational. When
6 Plaintiff contacted Defendant about the problem she was told that in order to stop the
7 clogs she would have to empty the ice tray every day. The refrigerator would also get
8 various error messages and sometimes it would simply stop working. When this
9 happened, Plaintiff was instructed by Defendant to unplug the refrigerator for at least 15
10 minutes and then plug it back in. Plaintiff was told by Defendant that this would reboot
11 the refrigerator’s control board. Sometimes Plaintiff would have to perform this
12 unplugging, waiting, and re-plugging ritual multiple times to try to reboot the control
13 board. When the refrigerator was unplugged and when it stopped working, the food in
14 the refrigerator was not being cooled by the SCP. Because the food was not being
15 cooled, it would spoil and ice would melt and leak onto the floor.

16 13. The plug for the refrigerator is located on the back of the refrigerator so it
17 was not an easy task to unplug the refrigerator. The refrigerator was heavy and it had to
18 be moved out from the cupboard space and away from the wall and then moved back
19 when it started up again.

20 14. Defendant provides an express warranty for workmanship and materials.
21 Defendant contracts with third party repair companies to provide repairs to consumers
22 under the express warranty. Defendant pays the third party repair companies a one-time
23 amount regardless how many times the refrigerators have to be repaired. A consumer
24 will contact Defendant who will direct them to the third party repair company servicing
25 the consumer’s location.

26 **CLASS ALLEGATIONS**

27 15. Plaintiff brings this action on behalf of herself and all others similarly
28 situated as a class action pursuant to Rule 23(a)(1) and (3) and Civil Code §1781.

1 16. Plaintiff seeks to represent the following classes:

- 2 a. All persons in California who purchased an LG refrigerator for home
3 use with the LG Smart Cooling Plus System (California SCP Class).
4 b. All persons in California who purchased an LG refrigerator for home
5 use with the LG Slim SpacePlus™ Ice System (California Ice System
6 Class).
7 c. All persons in California who purchased an LG refrigerator Model No.
8 LFX31925ST (California Model Class).
9 d. All persons in the United States who purchased an LG refrigerator for
10 home use with the LG Smart Cooling Plus System (Nationwide SCP
11 Class).
12 e. All persons in the United States who purchased an LG refrigerator for
13 home use with the LG Slim SpacePlus™ Ice System (Nationwide Ice
14 System Class).
15 f. All persons in the United States who purchased an LG refrigerator
16 Model No. LFX31925ST (Nationwide Model Class).

17 17. The California SCP Class, the California Ice System Class, the California
18 Model Class, the Nationwide SCP Class, the Nationwide Ice System Class, and the
19 Nationwide Model Class are collectively referred to as the “Classes.”

20 18. The California SCP Class, the California Ice System Class, and the
21 California Model Class are collectively referred to as the “California Classes.”

22 19. Excluded from the Classes are Defendant, any entity in which Defendant
23 has a controlling interest, and any of the Defendant’s subsidiaries, affiliates, and officers,
24 directors or employees and any legal representative, heir, successor, or assigns of
25 Defendant.

26 20. The members of the Classes are so numerous that joinder of all such
27 persons is impracticable and the disposition of their claims as a class will benefit the
28 parties and the court. While the exact number of members of the Classes are unknown to

1 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff
 2 is informed and believes, and on that basis alleges, that thousands of persons are
 3 members of the Classes.

4 21. There is a well-defined commonality of interest in questions of fact
 5 involving and affecting Plaintiff and the Classes which includes, without limitation:

- 6 a. Whether Defendant made material omissions regarding extraordinary
 7 measures a consumer would need to take to keep the SCP, Ice System, and
 8 Model operational in order to make them fit for the ordinary purposes for
 9 which they were intended and used;
- 10 b. Whether Defendant knew and/or recklessly disregarded the fact that the
 11 extraordinary measures were required to keep the SCP, Ice System, and
 12 Model operational;
- 13 c. Whether Defendant engaged in unfair competition, unconscionable acts or
 14 practices, and unfair or deceptive acts or practices in connection with the
 15 sale of the SCP, Ice System, and Model;
- 16 d. Whether Defendant violated the consumer protection statutes in California;
- 17 e. Whether Defendant breached its implied warranties;
- 18 f. Whether Defendant breached express written and/or representative
 19 warranties;
- 20 g. Whether Defendant has been unjustly enriched;
- 21 h. Whether Plaintiff and the Classes have suffered damages as a result of
 22 Defendant's conduct, and, if so, the appropriate amount thereof; and
- 23 i. Whether as a result of Defendant's conduct, Plaintiff and the Classes are
 24 entitled to equitable relief or other relief, and, if so, the nature of such
 25 relief.

26 22. The claims of Plaintiff alleged herein are typical of those claims by
 27 members of the Classes and the relief sought is typical of the relief which would be
 28 sought by members of the Classes.

23. Plaintiff and her counsel will fairly and adequately represent and protect the interests of all members of the Classes.

24. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the class, establishing incompatible standards of conduct for Defendant and resulting in the impairment of rights of members of the Classes and the disposition of their interest through actions to which they were not parties.

25. A single class action is superior to numerous individual actions as a means of adjudicating those claims.

FIRST CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the California Classes against Defendant)

Violations of the California Consumer Legal Remedies Act

26. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Second Amended Complaint as though fully set forth herein.

27. Plaintiff, individually and on behalf of all similarly situated California Class members, and the general public seek injunctive relief and recovery of damages for Defendant's violation of the California Consumer Legal Remedies Act, California Civil Code §§1750, *et seq.*

28. The CLRA applies to Defendant's actions and conduct described herein because it extends to transactions that are intended to result, or which have resulted, in the sale of goods to consumers for personal, family or household use.

29. Refrigerators constitute "goods" within the meaning of Civil Code §1761(a).

30. Defendant constitutes a "person" within the meaning of Civil Code §1761(c).

31. Plaintiff and the California Class are "consumers" within the meaning of the Civil Code §1761(d).

32. Defendant's conduct as alleged herein constitutes a "transaction" within the meaning of Civil Code §1761(e).

33. The CLRA provides in relevant part that "[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction and intended to result or which results in the sale or lease of goods...to any consumer are unlawful: (5) Representing that goods... have... characteristics, uses, benefits...which they do not have; (7) Representing that goods...are of a particular standard, quality or grade...if they are of another;... and (9) Advertising goods... with intent not to sell them as advertised." Civil Code §§1770(a)(5), (7), and (9).

34. Civil Code §1780(a)(2) permits any court of competent jurisdiction to enjoin practices that violate Civil Code §1770.

35. On December 7, 2012, Plaintiff sent a letter to Defendant demanding within 30 days that Defendant correct, repair, replace or otherwise rectify the deceptive practices complained herein for the entire California Class pursuant to Civil Code §1770. Defendant has failed to do so. Therefore, in addition to injunctive relief, Plaintiff seeks damages pursuant to Civil Code §1782(d) on behalf of herself and the California Classes.

36. Under Civil Code §1780(d), Plaintiff may also recover attorneys' fees and costs according to proof at time of trial.

Allegations for the California SCP Class

37. The SCP stops regulating the temperature in the different temperature zones of the refrigerator. When this happens, the food begins to spoil and ice melts and leaks out of the refrigerator. In order to restart the SCP, Plaintiff was regularly required to unplug the refrigerator, wait for at least 15 minutes, and then re-plug in the refrigerator.

38. At no time prior to the purchase of the refrigerator was Plaintiff told that in order to keep the SCP operational, she would need to repeatedly unplug the refrigerator for at least 15 minutes. Omission of this critical information was misleading and was

1 done for the purpose of inducing Plaintiff and the California SCP Class into purchasing
2 Defendant's refrigerators.

3 39. Unplugging the refrigerator and re-plugging it in would only provide a
4 temporary fix. This exercise would need to be performed on a regular basis.

5 40. Had Plaintiff known she would have to continually keep unplugging and re-
6 plugging in the refrigerator to keep the SCP system operational, she would not have
7 purchased the refrigerator.

8 41. A reasonable consumer would want to know that this action was necessary
9 in order to keep the SCP operational. This is especially true because the refrigerator fell
10 at the upper end of the price spectrum.

11 42. Defendant had multiple opportunities to disclose the extraordinary
12 measures necessary to keep the SCP operational. This includes, but is not limited to,
13 disclosure at the retail display of refrigerators with the SCP, on its websites, and at the
14 point of purchase.

15 43. Plaintiff and the California SCP Class reasonably relied on the
16 representation that the refrigerator had the capability to regulate the temperature in
17 various zones of the refrigerator and that this function would help keep food fresh longer
18 than other refrigerators without the SCP technology. In actuality, the SCP stops working
19 completely or fails to regulate the temperature in the refrigerator because it causes food to
20 defrost, ice to melt, and the refrigerator to become warm.

21 44. Defendant knew that the SCP did not work as represented and did not have
22 the qualities that were represented when it sold the product to Plaintiff and the California
23 SCP Class. Defendant has a phone number for customers to call to report problems.
24 Customers had previously contacted Defendant to report problems with the cooling of the
25 refrigerator because when Plaintiff called to report the problem she was told the fix was
26 to unplug the refrigerator in order to reboot it. This indicates Defendant was aware of the
27 problem prior to Plaintiff's call and had developed a "fix." Defendant's knowledge was
28 further confirmed when Defendant sent out a service technician from Browne's

1 Appliances to perform warranty repairs to the refrigerator. The service technician, who
 2 was hired by Defendant to perform warranty repairs and indicated to Plaintiff that he had
 3 performed many other repairs on Defendant's products, explained that the types of
 4 problems Plaintiff was experiencing were common to Defendant's refrigerators.

5 45. Defendant also knew of the problem with the SCP because it tracks
 6 problems with its products. When a customer calls Defendant to report a problem, a
 7 claim number is generated. If a service technician is sent to perform repairs, the service
 8 technician must track by claim number the part and repairs performed. Defendant must
 9 keep track of these claim numbers and the repairs performed as part of its ability to
 10 comply with its No Lemon Guarantee provided to members of the California Classes.
 11 Defendant referred to prior claims Plaintiff had made during their conversations so it was
 12 clear that Defendant kept track of calls it received.

13 46. Plaintiff is also informed and believes that Defendant knew of the problem
 14 with the SCP because its warranty service providers must report to Defendant the types of
 15 problems encountered and obtain necessary equipment, instruction, and training to repair
 16 Defendant's products.

17 47. Plaintiff is also informed and believes that Defendant knew of the problem
 18 with the SCP System because LG customers called its customer service line to complain.
 19 This is evidenced by numerous complaints lodged on various websites which document
 20 LG customers repeated calls to LG to complain about the SCP. For example, on the
 21 website [consumeraffairs.com](http://www.consumeraffairs.com), 938 LG customers have posted reviews about their LG
 22 refrigerators, with 81% giving a one-star (out of five) rating; 16% giving it a two-star
 23 rating – and only one percent providing either a 3, 4 or 5-star rating. Multiple posts by
 24 LG customers evidence their repeated calls to LG and LG's refusal or inability to repair
 25 the problems. For example:

26 http://www.consumeraffairs.com	“Bought new bottom freezer french door
27 /homeowners/lg_refrigerator.html	refrigerator in February 2011, now in December

?page=6

Mary of Bethesda, MD, posted the following on January 10, 2012:

2011 fridge won't fully cool and water is leaking at the back left and from the bottom of the fridge. Called service at LG and they gave me a company who will fix. Four days later they called and said they do not service the area. Then LG gave me another company very far away and they didn't answer as they were on vacation. Finally after about 8 days, LG sent out someone who worked directly for them and he only fixed the filter and said everything else was fine.

The temperature (noted by two new thermometers I have bought) inside was 42, despite the thermostat being set at 34! This man said it was the food that was supposed to be 34 not the air temperature! He said we needed to get a special thermometer to test the food temperature. That was crazy. The food was slowly going bad again. I have moved food in and out of the fridge because I have been told it needs to be empty for fixing and then told I could put food back in after it was fixed (it wasn't). This has happened three times. It is now three weeks later and while the water is no longer leaking, the fridge part is still not cooling properly. Their repair man says it is fixed.

	<p>Very interesting that the warranty is going to be up in a few weeks. LG says someone will come out in three days. Why is it that they have no contract with fixer companies in my urban area (DC)? That is because the companies say LG pays very little to these companies and they don't want to work for them doing free warranty work. This is unacceptable. I have lost 100's of dollars of food over Christmas and New Year. I want all of us to file a class action lawsuit. I am truly fed up."</p>
<p>http://www.amazon.com/LG-LFX31925ST-Stainless-French-Refrigerator/product-reviews/B0052QXY5K/ref=dp_top_cm_cr_acr_txt?ie=UTF8&showViewpoints=1</p> <p>On July 1, 2012, Stephen D. Hoschler wrote:</p>	<p>"We had problems with the refrigerator from day 1. The ice and water would stop working completely and produce would freeze. LG service first advised us to turn the unit off and then back on to reset it...trouble is THERE IS NO ON/OFF SWITCH. We had to pull the fridge out from the wall to unplug it. That helped for about an hour, then it went down again. Service came out and ordered all new electronics for the icemaker saying it was a KNOWN DEFECT. If you set the controls for the freezer for below zero (which you are supposed to be able to do) the unit stops working. LG solution: Don't set it below zero. It makes VERY little ice...plan on buying ice for parties (or</p>

	weekends). LG is amazingly dismissive of these problems. BTW, LG won't allow posting negative reviews on their website.”
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48. Defendant intended Plaintiff and the California SCP Class to rely on its representations that the SCP would regulate the temperature in the various zones of its refrigerators and keep the refrigerator cool without having to take extraordinary measures. One of the reasons Plaintiff purchased the refrigerator with the SCP technology was because the temperature variations it offered were supposed to keep food fresh longer than other refrigerators without the SCP technology. Defendant’s own advertising claims the SCP keeps food fresh longer and that it is “cutting edge technology.” Defendant’s advertising indicates that it is attempting to distinguish itself from other refrigerators and induce consumers to purchase its product by offering a new technology that other refrigerators do not have.

49. Plaintiff and the California SCP Class have suffered and continue to suffer injury in fact and have lost money as a result of Defendant’s omission in that they have overpaid for the refrigerators with the SCP, incurred additional operating expenses and/or would not have bought the refrigerators with the SCP had the Defendant disclosed that the SCP was unable to perform its essential function of regulating the temperature in the refrigerator. Further, when the SCP would stop functioning, frozen items and ice would melt. The water would leak out of the refrigerator onto the floor. This created a safety hazard and damage to the floor. Food would also begin to spoil and would spoil. Plaintiff was required to throw out a significant amount of food, which caused monetary loss. Plaintiff was also not able to use a refrigerator that she bought for approximately \$3,000 for extended periods of time. Plaintiff is informed and believes that other members of the California SCP Class suffered similar injuries.

1 50. Defendant's actions were intended to harm Plaintiff and the California SCP
2 Class and were done with malice and conscious disregarding of Plaintiff and the
3 California SCP Class's rights as stated herein.

4 51. On behalf of herself and the California SCP Class, Plaintiff requests an
5 order enjoining the methods, acts, or practices; restitution; attorney's fees and costs;
6 actual damages; punitive damages; and any other relief that the Court deems proper.

7 **Allegations for the Ice System Class**

8 52. Ice gets clogged in the ice chute of the refrigerators and the Ice System
9 stops working. Plaintiff was told by Defendant that to prevent this she would have to
10 regularly empty the ice tray.

11 53. At no time prior to the purchase of the refrigerator was Plaintiff told that in
12 order to keep the Ice System operational she would need to regularly empty the ice tray.
13 Plaintiff had never before been required to empty the ice tray in her previous refrigerators
14 in order to keep the icemaker operational. Had Plaintiff know this action was required to
15 keep the Ice System operational she would not have purchased the refrigerator.

16 54. A reasonable consumer would also want to know that they would need to
17 regularly empty the ice tray, in what was supposed to be an automated icemaker, in order
18 to keep the Ice System operational. This is especially true because the refrigerator fell at
19 the upper end of the price spectrum and people who buy a refrigerator with an ice maker
20 reasonably want it to make ice and have ice available for use without having to regularly
21 empty the icemaker or risk it clogging.

22 55. Defendant had multiple opportunities to disclose the extraordinary
23 measures necessary to keep the Ice System operational. This includes, but is not limited
24 to, disclosure at the retail display of refrigerators with the Ice System, on its websites, and
25 at the point of purchase.

26 56. Plaintiff and the California Ice System Class reasonably relied on the
27 representation that the Ice System would function as an ice maker that would make and
28

1 dispense ice. In actuality, however, the Ice System would clog and the consumer would
2 need to regularly dump the ice that it made in order to keep it operational.

3 57. Defendant was aware of the extraordinary efforts that were required to keep
4 the Ice System operational but failed to disclose these facts to Plaintiff and the California
5 Ice System Class. Defendant's knowledge is based on the following complaints on
6 Defendant's own website that were made prior to Plaintiff's purchase of the refrigerator:
7

8 9 10 11 12 13 14 15	August 13, 2011 User Name: BuddyBrou http://www.lg.com/us/refrigerators/lg-LFX31925ST-french-3-door-refrigerator	"This fridge is HUGE. We love all of the extra space. However, we've had problems with the ice dispenser in the door from the first day the fridge was delivered. And we've been waiting weeks for repairs. Also, the ice maker does not store much ice, which is a problem for our large family. Finally, make sure you note that the water dispenser in the door is NOT in the same location as the ice dispenser."
16 17 18 19 20 21 22 23 24	August 19, 2011 User Name: dcp http://www.lg.com/us/refrigerators/lg-LFX31925ST-french-3-door-refrigerator	"Purchased this refrigerator end of June- now, mid August. Refrigerator section is awesome. Ice maker capabilities are too small for this size refrig.. Also, I currently have a service call arranged because the ice through the door feature is clogging on a daily basis. So, the ice that it does make stays clogged in the door. Why put a poorly designed small ice maker in the largest capacity free standing refrig currently on the market?"
25 26 27 28	October 1, 2011 User Name: varway http://www.lg.com/us/refriger	"This is a great refrigerator for a foodie. Love the wide space inside, love the lighting, love the freezer below. Love the ice maker.

ators/lg-LFX31925ST-french-
3-door-refrigerator

But, slightly more than two months since we got it, the repair guy was here on Thursday and said he was ordering another freezer fan for us. That ice maker that I love so much? Not working right now while we wait for the part to come in and for him to come back to replace it.”

58. It was further confirmed that Defendant knew of the problem with the Ice System when the service technician that Defendant sent from Browne’s Appliances to perform warranty repairs to the refrigerator said that Plaintiff’s problems with her refrigerator are common.

59. Defendant also knew of the problem with the Ice System because it hired warranty service providers to repair its products. When a customer calls Defendant to report a problem, a claim number is generated. If a service technician is sent to perform repairs, the service technician must track by claim number the part and repairs performed. Defendant must keep track of these claim numbers and the repairs performed as part of its ability to comply with its No Lemon Guarantee provided to members of the California Classes. Defendant referred to prior claims Plaintiff had made during their conversations so it was clear that Defendant kept track of calls it received.

60. Plaintiff is also informed and believes that Defendant knew of the problem with the Ice System because its warranty service providers must report to Defendant the types of problems encountered and obtain necessary equipment, instruction, and training to repair Defendant’s products.

61. Plaintiff is also informed and believes that Defendant knew of the problem with the Ice System because LG customers called its customer service line to complain. This is evidenced by numerous complaints lodged on various websites which document LG customers repeated calls to LG to complain about the Ice System. For example, on

the website consumeraffairs.com, 938 LG customers have posted reviews about their LG refrigerators, with 81% giving a one-star (out of five) rating; 16% giving it a two-star rating – and only one percent providing either a 3, 4 or 5-star rating. Multiple posts by LG customers evidence their repeated calls to LG and LG’s refusal or inability to repair the problems. Below are some examples of customer complaints:

http://www.consumeraffairs.com/homeowners/lg_refrigerator.html?page=6

George of Martinez, GA, posted on February 27, 2012

“I bought a \$3000 LG LMX3195ST refrigerator on 07/30/2011. It has been broken from day 1. I have fifteen complaints filed and documented with LG. They have replaced warped door seals. They have unfrozen it twice. They have been out to disassemble/reassemble it from where MEI repaired it incorrectly and they replaced the motherboard. The unit still has error codes and the ice maker gets stuck in the on position. The first repair company, MEI, was horrible. The company had no diagnostic tools and where a no show, no call. The second company, A&E, I thought was pretty good and well equipped, but now stated by LG will not return their calls. After listening to the guy from MEI complain the whole time he was here about how LG was underpaying him, I would be willing to bet that there might be some kind of issues in this area. LG has not been able to call me and notify me of the trouble finding a repair center; instead I have waited as long as 13 days before I finally call them and just repeat the cycle. I refuse to give up and I will fight LG to the

1		end!"
2	http://www.consumeraffairs.com	"I have owned my LG French door refrigerator for
3	/homeowners/lg_refrigerator.html	18 months and have had two problems with the
4	?page=6	icemaker. The first problem happened during the
5	Margaret of Stuart FL, posted on	warranty and was covered. The ice bin plastic
6	Feb. 10, 2012	broke off and plastic bits were dispensed with ice.
7		The second problem is that the icemaker is
8		completely broken and needs to be replaced. I used
9		the "live chat" on the web site and they walked me
10		through a number of steps, but in the end, it needs
11		to be replaced. It's over \$300 after owning it for 18
12		months. I am not happy. My last refrigerator lasted
13		20 years with not one repair."

62. Defendant intended Plaintiff and the California Ice System Class to rely on its representations that the Ice System would act like an ice maker and make and dispense ice without having to take extraordinary measures. One of the reasons Plaintiff and the California Ice System Class purchased refrigerators with the Ice System technology was because they could have an ice maker that dispenses ice without the ice maker taking up valuable storage space.

63. Plaintiff and the California Ice System Class have suffered and continue to suffer injury in fact and have lost money as a result of Defendant's omission in that they have overpaid for the refrigerators with the Ice System, incurred additional operating expenses, and/or would not have bought the refrigerators with the Ice System had the Defendant disclosed the Ice System was unable to perform its essential function making and dispensing ice. Further, when the Ice System would clog it would sometimes cause the motor to burn out and the refrigerator to become non-operational. This would cause

1 food to defrost and ice to melt. Water would leak out of the refrigerator onto the floor.
2 This created a safety hazard and damage to the floor. Food would also begin to spoil.
3 Plaintiff was required to throw out a significant amount of food, which caused monetary
4 loss. Plaintiff was also not able to use a refrigerator that she bought for approximately
5 \$3,000. Plaintiff is informed and believes that other members of the California Ice
6 System Class suffered similar injuries.

7 64. Defendant's actions were intended to harm Plaintiff and the California Ice
8 System Class and were done with malice and conscious disregarding of Plaintiff and the
9 California Ice System Class's rights as alleged herein.

10 65. On behalf of herself and the California Ice System Class, Plaintiff requests
11 an order enjoining the methods, acts, or practices; restitution; attorney's fees and costs;
12 actual damages; punitive damages; and any other relief that the Court deems proper.

13 **California Model Class**

14 66. The refrigerator Model No. LFX31925ST ("Model") does not operate as
15 intended or advertised. The Model does not continuously refrigerate products nor does it
16 make or dispense ice properly without Plaintiff taking extraordinary steps to keep it
17 operational. Plaintiff was told by Defendant to unplug the refrigerator for at least 15
18 minutes and empty the ice tray. Defendant also sent a service technician out to repair the
19 problems with the refrigerator on numerous occasions.

20 67. At no time prior to the purchase of Model was Plaintiff told of the
21 extraordinary measures necessary to keep the refrigerator operating properly. Omission
22 of this critical information was misleading and was done for the purpose of inducing
23 Plaintiff and the California Model Class into purchasing the Model.

24 68. Had Plaintiff and the California Model Class known they would have to
25 continually keep unplugging and re-plugging in the Model, dumping the ice tray, and
26 having multiple service calls to keep Model operating they would not have purchased the
27 refrigerator.

1 69. A reasonable consumer would want to know that these actions were
2 necessary in order to keep the Model operational. This is especially true because the
3 refrigerator fell at the upper end of the price spectrum.

4 70. Defendant had multiple opportunities to disclose the extraordinary
5 measures necessary to keep the Model operational. This includes, but is not limited to,
6 disclosure at the retail display of the Model, on its websites, and at the point of purchase.

7 71. Plaintiff and the California Model Class reasonably relied on the
8 representation that the Model would act as a refrigerator and would make and dispense
9 ice. In actuality, however, the Model does not continuously refrigerate products nor does
10 it make and dispense ice properly.

11 72. Defendant knew that the Model did not work properly when it sold the
12 Model to Plaintiff. Defendant was aware of customer complaints about the refrigerator
13 from its own website. It keeps track of these complaints by assigning claim numbers.
14 Defendant knew of the “fix” to the Model prior to Plaintiff’s first complaint. The service
15 technician authorized by Defendant to perform warranty repairs also said that the
16 problems Plaintiff was having were common.

17 73. Defendant also knew of the problem with the Model because it hired
18 warranty service providers to repair its products. When a customer calls Defendant to
19 report a problem, a claim number is generated. If a service technician is sent to perform
20 repairs, the service technician must track by claim number the part and repairs performed.
21 Defendant must keep track of these claim numbers and the repairs performed as part of
22 its ability to comply with its No Lemon Guarantee provided to members of the California
23 Classes. Defendant referred to prior claims Plaintiff had made during their conversations
24 so it was clear that Defendant kept track of calls it received.

25 74. Plaintiff is also informed and believes that Defendant knew of the problem
26 with the Model because its warranty service providers must report to Defendant the types
27 of problems encountered and obtain necessary equipment, instruction, and training to
28 repair Defendant’s products.

75. Plaintiff is also informed and believes that Defendant knew of the problem with the Model because LG customers called its customer service line to complain. This is evidenced by numerous complaints lodged on various websites which document LG customers' repeated calls to LG to complain about the LFX31925ST Model. For example, on the website amazon.com, LG customers have posted reviews about their ongoing problems with the Model and LG's refusal or inability to repair the problems. Below are some examples of customer complaints:

<p>http://www.amazon.com/LG-LFX31925ST-Stainless-French-Refrigerator/product-reviews/B0052QXY5K/ref=dp_top_cm_cr_acr_txt?ie=UTF8&showViewpoints=1</p> <p>On November 29, 2012, consumer Jennifer Gursahaney of Garnet Valley, Pennsylvania wrote about the LG LFX31925ST 30.7 Cu. Ft. Stainless Steel French Door Refrigerator - Energy Star:</p>	<p>"I bought this fridge in May 2011 when it had just entered the market and was only available at HH Gregg. I was so excited by the capacity since my family of 5 eats and I cook A LOT! It was so pretty, shiny, and new while not taking up any more space than the 24 cu ft it replaced. In the 1st month it started making a lot of noise. Serviceman replaced the seal and reset the freezer door on the track. As soon as he left, food in freezer was covered in snow and again the noise. Serviceman replaced the board and fan motor. 2 weeks later, yep, the noise! After 5 service calls for the same thing, LG said I was out of warranty since it was a year old. Made a one-time courtesy to fix it, serviceman came out Nov 2012 with some new board that was the fix for my issue. Yep, you guessed it, right in the middle of Thanksgiving dinner...THE NOISE!!! It sounded like a jackhammer! I'm so beyond angry at this time, I will not be buying another</p>
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1		LG fridge again. You can find better ways to
2		spend \$3K than this fridge, trust me!"
3	http://www.amazon.com/LG-LFX31925ST-Stainless-French-Refrigerator/product-reviews/B0052QXY5K/ref=dp_top_cm_cr_acr_txt?ie=UTF8&showViewpoints=1	"I have this unit for about a year. Purchased from
4		HomeDepot in California. It is a very large
5		refrigerator with plenty of space and some good
6		design, maxing storage space. The French doors
7		allow for great access and the shelvings [sic] on
8		the doors allow for great storage while the lower
9	On July 12, 2012, TF wrote about	drawers can still be pulled out when the doors
10	the LG LFX 31925ST refrigerator:	open at 90 degrees (great if the unit placed near a
11		wall on either side)
12		However, the unit make[s] load noises. In one
13		year the ice maker stopped working twice, a fan
14		was replaced once, the French doors "closing bar"
15		broke off once and the water indicator peeled off
16		completely.
17		[I]t is working well now after the fan was
18		replaced.
19		For the price paid, this unit should have been
20		made better, I would not recommend buying it. If
21		you do, get a good warranty coverage, you might
22		need it.
23		TF"
24		
25		Addition AUG 2012:
26		"The unit is back making noise, the freezer
27		portion stopped working and there is a" clicking"
28		

1		sounds as if a metal fan, at high speed, is striking
2		something. The whole front digital control panel
3		was replaced today, I am not sure why, but the
4		technician believe this is the problem.
5		I hope this is the last review about this unit; I
6		would love to see it working well.
7		TF”
8	http://www.amazon.com/ LG-LFX31925ST-Stainless-French- Refrigerator/product- reviews/B0052QXY5K/ref=dp_top_ cm_cr_acr_txt?ie= UTF8&showViewpoints=1	“We bought this refrigerator in July 2011 and it
9		has broken twice now. First the ice maker and
10		now a freezer full of food. I just threw out
11		hundreds of dollars worth of food. The customer
12		service at LG is terrible. I wish I had never
13		bought this refrigerator.”
14	On April 1, 2012, Carroll A.	
15	Simmons wrote about the LG	
16	LFX31925ST 30.7 Cu. Ft. Stainless	
17	Steel French Door Refrigerator -	
18	Energy Star:	

76. Defendant intended Plaintiff and the California Model Class to rely on its representations that the Model would actually function like a refrigerator without having to take extraordinary measures. Defendant calls the Model a refrigerator, the refrigerator is displayed with other refrigerators, Plaintiff was told at the time of purchase that the refrigerator had a special feature for regulating temperature, and that it has an ice maker that makes, stores, and dispenses ice. The Model itself looks like it has an ice maker that makes, stores, and dispenses ice.

77. Plaintiff and the California Model Class have suffered and continue to suffer injury in fact and have lost money as a result of Defendant’s omission in that they

1 have overpaid for the Model, incurred additional operating expenses and/or would not
 2 have bought the Model had the Defendant disclosed the Model was unable to perform its
 3 essential function of refrigeration and making, storing, and dispensing ice. When the
 4 Model stopped functioning, frozen items and ice would melt. The water would leak out
 5 of the refrigerator onto the floor. This created a safety hazard and damage to the floor.
 6 Food would also begin to spoil. Plaintiff was required to throw out a significant amount
 7 of food, which caused monetary loss. Plaintiff was also not able to use a refrigerator that
 8 she bought for approximately \$3,000. Plaintiff is informed and believes that other
 9 members of the California Model Class suffered similar injuries.

10 78. Defendant's actions were intended to harm Plaintiff and the California
 11 Model Class and were done with malice and conscious disregarding of Plaintiff and the
 12 California Model Class's rights as stated herein.

13 79. On behalf of herself and the California Model Class, Plaintiff requests an
 14 order enjoining the methods, acts, or practices; restitution; attorney's fees and costs;
 15 actual damages; punitive damages; and any other relief that the Court deems proper.

16 **SECOND CAUSE OF ACTION**

17 (By Plaintiff, individually and on behalf of the California Classes)

18 **Violations of Cal. Bus. & Prof. Code §17200, *et seq.***

19 80. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the
 20 paragraphs stated above in this Second Amended Complaint as though fully set forth
 21 herein.

22 81. Plaintiff, individually and on behalf of all similarly situated California
 23 Class members, and the general public, brings this cause of action pursuant to California
 24 Business and Professions Code §17200, *et seq.*

25 82. The Unfair Business Practices Act defines unfair business competition to
 26 include any "unfair," "unlawful," or "fraudulent" business act or practice. California
 27 Bus. & Prof. Code §§17200 and 17500, *et seq.* The Act also provides for injunctive relief
 28 and restitution for violations.

83. Defendant has engaged in unlawful, unfair and/or fraudulent business acts and practices as set forth above.

84. Defendant's conduct constitutes unfair business acts and practices because Defendant's practices as described herein have deceived and/or were likely to deceive Plaintiff and the California Class, and other members of the consuming public. At no time prior to the purchase of SCP, Ice System, or Model was Plaintiff or the California Classes told that extraordinary measures were required to keep the products operational. Failure to disclose this information constitutes material omissions of facts that a reasonable consumer would to know prior to the purchase of the products.

85. Further, Defendant's acts and practices are unlawful because they violate or violated one or more of the following: California Civil Code §§1790, *et seq.*; Civil Code §1750, *et seq.*; California Uniform Commercial Code §2313; and California Bus. & Prof. Code §§17200 and 17500, *et seq.*

86. Defendant's acts and practices are fraudulent in that it knowingly failed to disclose material facts that a reasonable consumer would want to know prior to the purchase of the products.

87. The injury to Plaintiff and the California Classes greatly outweigh any alleged countervailing benefit to consumers or competition under all of the circumstances. The injury clearly constitutes substantial injury as the products develop serious problems which require costly repairs and losses to the California Classes and extraordinary measures to keep operational. There is no benefit to the consumers by allowing Defendant to knowingly market and sell products without disclosing material facts that a reasonable consumer would want to know.

88. Plaintiff and the California Classes seek an order of this Court awarding restitution, injunctive relief and all other relief allowed under Section 17200, *et seq.*, plus interest, attorneys' fees and costs under California Code of Civil Procedure section 1021.5.

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THIRD CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the California Classes)

Violations of Cal. Bus. & Prof. Code §17500, *et seq.*

89. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Second Amended Complaint as though fully set forth herein.

90. Plaintiff, individually and on behalf of all similarly situated members of the California Classes, and the general public, brings this cause of action pursuant to the California Business and Professions Code §17500 *et seq.*

91. The misrepresentations by omission by Defendant of the material facts detailed above constitute false and misleading advertising by omission and therefore constitute a violation of California Bus. & Prof. Code §17500, *et seq.*

92. At all times relevant, Defendant's material omissions were likely to deceive consumers into purchasing refrigerators with the SCP and Ice System and purchasing the Model.

93. Plaintiff and the California Classes have suffered injury in fact and have lost money or property as a result of Defendant's unfair advertising of the Refrigerators, as more fully set forth herein. These injuries are ongoing in that Plaintiff and the California Classes continue to have problems with the SCP, Ice System, and Model and Defendant continues to fail to disclose the extraordinary measures that must take place to keep the Refrigerator operational.

94. Unless Defendant is enjoined from continuing to engage in such wrongful actions and conduct, members of the California Classes will continue to be damaged by Defendant's false and /or misleading advertising by omission.

95. Plaintiff and the California Classes seeks an order requiring Defendant to make full restitution of all monies wrongfully obtained and disgorge all ill-gotten revenues and/or profits, together with interest thereon and costs under California Code of Civil Procedure section 1021.5.

FOURTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the California Classes)

Breach of Express Warranty under the Song Beverly Act, Cal. Civ. Code §1790, *et seq.*, Cal. Comm. Code §2313, and California Common Law

96. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Seconded Amended Complaint as though fully set forth herein.

97. Plaintiff, individually and on behalf of all similarly situated California Class members, and the general public seeks recovery for Defendant's breach of express warranty under the laws of the State of California.

98. Defendant's express written warranty states: "[s]hould your LG Refrigerator ("Product") fail due to a defect in materials or workmanship under normal home use, during the warranty period set forth below, LG will at its option repair or replace the product."

99. Plaintiff provided Defendant repeated opportunities to repair the SCP, Ice System, and Model within the warranty period. Her first phone call to Defendant concerning problems with the refrigerator was during the first month of ownership. She made multiple calls thereafter. On multiple occasions when Plaintiff would call to report problems with the refrigerator, Defendant told Plaintiff to unplug the refrigerator, wait, and then plug it back in. This "fix" would be for various problems with the refrigerator, including when the refrigerator would make a loud noise like it was a plane taking off, when it would start to vibrate, when the control panel would start to flash, or when various error codes (such as "ER" or "Error Code FF") would appear. When the ice maker would clog, Defendant would tell Plaintiff she needed to dump the ice in the ice maker every day so it would not get too full.

100. In March 2012 Defendant finally decided to send a service technician to look at the refrigerator. The service technician determined at that time the Refrigerator

1 needed a new “controller assy, main PCB, motor bracket, and motor.” These repairs
2 were made to the refrigerator.

3 101. Plaintiff continued to have problems with the refrigerator even after the
4 repairs so she continued to contact Defendant. In early May 2012 a service technician
5 was out again because of problems with the refrigerator. During this visit the service
6 technician adjusted the cube size and “cleared faults.” Just one month later, in June 2012,
7 a service technician was again out. He unclogged the ice chute and determined the motor
8 was burned out and that it needed another new PCB.

9 102 After Defendant’s repeated failure to correct the problems, Plaintiff
10 requested Defendant provide her with a new refrigerator. Defendant refused claiming
11 that *Plaintiff* was required to report the *exact* same problem at least three times before
12 Defendant would even consider replacing the refrigerator.

13 103. Defendant failed to honor its express warranty to repair or replace the
14 product. Any purported repair that Defendant made was itself defective because the
15 repair failed and problems persisted. When Plaintiff sought replacement of the
16 refrigerator, Defendant refused. Defendant has failed to comply with Song-Beverly Act,
17 Civil Code §1793.2(b) and (d), Cal. Uniform Commercial Code § 2313, and California
18 Common Law.

19 104. Plaintiff and the California Classes relied on the express written warranties
20 and Defendant has failed to satisfy its obligations under the express written warranties by
21 not adequately repairing and/or replacing the products.

22 105. Defendant had no motivation to fix the products because it entered into
23 contracts with repair companies whereby Defendant paid them a one-time amount
24 regardless how many times the Refrigerators had to be repaired. Defendant’s behavior
25 shows a conscious disregard for the rights of Plaintiff and the California Classes.

26 106. Defendant breached its express warranties, as set forth above, by selling
27 and supplying the products in conditions which did not meet the warranty obligations
28 undertaken by Defendant and by failing to adequately repair the products.

1 107. Defendant has received complaints and other notices from its customers
2 advising Defendant of the same problems that Plaintiff experienced with her Refrigerator.
3 Despite the notice and Defendant's knowledge, Defendant refused to honor its
4 warranties.

5 108. Even if notice was not given, or is somehow deemed defective, notice
6 should be excused because of Defendant's knowledge of the problems with the products
7 as alleged herein and because notice would have been and is futile as evidenced by
8 Defendant's policy and practice of not adequately repairing or replacing the products.

9 109. Plaintiff sent a letter to Defendant regarding the problems with her
10 refrigerator and how it failed to operate as intended. Thus, Plaintiff provided timely
11 notice of the breaches of warranty alleged herein pursuant to California Commercial
12 Code §2607(3)(A).

13 110. Plaintiff and the California Classes were intended third-party beneficiaries
14 of the expressed warranty made by Defendant. Defendant, who is manufacturer of the
15 Model and the refrigerators that use the SCP and Ice System, knew that the retailers to
16 whom it sold these products to were not going to own the products any longer than it took
17 to sell them to Plaintiff and the California Classes. Further, Defendant intended the
18 express warranty to be for the benefit of the Plaintiff and the California Classes, i.g. the
19 consumers of the products.

20 111. As a proximate result of Defendant's breach of express warranty, Plaintiff
21 and the California Classes have sustained damages and other losses in an amount to be
22 determined at trial. Plaintiff and the California Class are entitled to recover damages
23 pursuant to Civil Code §1794, including, attorneys' fees, rescission and other relief as is
24 deemed appropriate. Plaintiff and the California Class are also entitled to an award of
25 punitive damages.

26 //

27 //

28 //

FIFTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the California Classes)

Breach of Implied Warranty under the Song Beverly Act Cal. Civ. Code §1790, *et seq.*, Cal. Uniform Comm. Code §2314, and California Common Law

112. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Second Amended Complaint as though fully set forth herein.

113. Plaintiff, individually and on behalf of all persons similarly situated and the general public seeks recovery for Defendant's breach of the implied warranty.

114. Under California's Song-Beverly Consumer Warranty Act, Cal. Civ. Code §1792 *et seq.*, every sale of consumer goods is accompanied by both a "manufacturer's and retailer's" implied warranty that the goods are merchantable.

115. The refrigerator and the parts contained therein are "consumer goods" within the meaning of Cal. Civ. Code §1791(a).

116. Defendant is a "manufacturer" within the meaning of Cal. Civ. Code §1791(j).

117. Plaintiff and the California Classes bought the Model and/or the refrigerators with the SCP and Ice System at retail stores in the State of California.

118. At the time of sale, and currently, Defendant is in the business of manufacturing and selling refrigerators with the SCP and Ice System.

119. There is privity between Defendant, Plaintiff and the California Classes by Defendant's direct warranties and/or because Plaintiff and the California Classes were intended third-party beneficiaries of the implied warranty made by Defendant. Defendant knew that the retailers to whom it sold the refrigerators with the SCP and Ice System were not going to own the refrigerators any longer than it took to sell them to Plaintiff and the California Classes. Further, Defendant intended that the implied warranty that applied to the refrigerators was for the benefit of the Plaintiff and the California Classes.

1 120. By operation of law, Defendant impliedly warranted to Plaintiff and the
2 California Classes that its Model, SCP, and Ice System were of merchantable quality and
3 fit for the ordinary purposes for which they are intended and used. Defendant breached
4 the implied warranty at the time of sale.

5 121. Defendant knowingly and/or recklessly sold the Model and refrigerators
6 with the SCP and Ice System that were not fit for the ordinary purposes for which they
7 were intended and used. As alleged herein, Defendant possessed actual superior
8 knowledge that the Model, SCP, and Ice System did not work as intended. Defendant's
9 waiver and/or limits on implied warranties are unconscionable, illegal, and
10 unenforceable, since Plaintiff and the California Classes had no meaningful choice in
11 determining those time limitations.

12 122. To the extent that Defendant may claim that it disclaimed the implied
13 warranties under the Song Beverly Act, such disclaimer is invalid under California Civil
14 Code §§ 1790.1, 1791.3, 1792.3 because there was no disclaimer provided that the
15 Model, SCP, and/or Ice System were being sold "as is" or "with all faults."

16 123. To the extent that Defendant may now claim that it excluded or modified
17 the implied warranties under the California Uniform Commercial Code, such waiver is
18 invalid because it was not conspicuous as required by California Uniform Commercial
19 Code § 2316(2). Plaintiff was not made aware of any waiver of implied warranties at the
20 time of her purchase of the refrigerator. The manual for the refrigerator was packed
21 inside the refrigerator box and was not provided to her until after her purchase of the
22 refrigerator. There was no posting of any warranty disclaimer on the refrigerator and no
23 one mentioned any warranty disclaimer at the time of the purchase.

24 124. Plaintiff was not provided the option to purchase additional warranty
25 coverage from Defendant at the time of purchase. Plaintiff is informed and believes that
26 Defendant does not provide the option to obtain additional warranty coverage outside of
27 the one year limited warranty already provided by Defendant. Defendant only offers an
28 LG Premium Care Plan to extend the limited one year express warranty for up to three

1 additional years. Plaintiff and the California Classes had no way to obtain additional
 2 coverage for the warranties of the merchantability or fitness of the Model, SCP, or Ice
 3 System for a particular purpose from Defendant. Further, Defendant refused to honor its
 4 express warranty because it refused to adequately repair or replace the refrigerator.

5 125. Plaintiff did not have the option of purchasing another refrigerator with the
 6 same space, layout, design, lighting, features, SCP, Ice System, or look as the one
 7 available from Defendant. Plaintiff is informed and believes that Defendant patents its
 8 products so that others cannot copy them.

9 126. As a proximate result of Defendant's breach of implied warranty, Plaintiff
 10 and the California Classes have sustained damages and other losses in an amount to be
 11 determined at trial. Plaintiff and the California Classes are entitled to recover damages
 12 and attorneys' fees as provided by statute, as well as costs, rescission, and other relief as
 13 is deemed appropriate.

14 127. Plaintiff and the California Classes also seek punitive damages since
 15 Defendant acted with malice, oppression and fraud in performing the conduct set forth
 16 above.

17 **SIXTH CAUSE OF ACTION**

18 (By Plaintiff, individually and on behalf of the Classes against Defendant)

19 **Violations of the Magnuson-Moss Warranty Act (15 U.S.C. §§2301, *et seq.*) – Breach** 20 **of Written Warranty**

21 128. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the
 22 paragraphs stated above in this Second Amended Complaint as though fully set forth
 23 herein.

24 129. Plaintiff, individually and on behalf of all similarly situated members of the
 25 Classes, and the general public seeks recovery for Defendant's breach of written warranty
 26 under the laws of the Magnuson-Moss Warranty Act.

27 130. The Refrigerators are "consumer products" as that term is defined under 15
 28 U.S.C. §2301(3).

4. An order requiring restitution of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations.
5. For statutory pre-judgment and post-judgment interest on any amounts;
6. For an order enjoining Defendant wrongful, unlawful, fraudulent, deceptive, and unfair conduct as set forth above and to require Defendant to engage in a corrective notice campaign;
7. For payment of reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil Procedure §1021.5;
8. For costs of suit;
9. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: July 8, 2013

**CALLAHAN, THOMPSON, SHERMAN
& CAUDILL, LLP**

By s/Kathleen Hartman
KATHLEEN M. HARTMAN
Attorneys for Plaintiff
**JEANNETTE CLARK, individually
and on behalf of the Classes**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEANNETTE S. CLARK, individually
and on behalf of those similarly
situated,

Plaintiff,

vs.

LG ELECTRONICS U.S.A., INC.,
and DOES 1-25,

Defendants.

Case No.: 3:13-cv-0485-JM-JMA

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2013, I caused the following
document(s):

SECOND AMENDED COMPLAINT FOR DAMAGES

to be filed electronically with the Clerk of the Court through ECF, and that
ECF will send an e-notice of electronic filing to the following counsel:

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Dated: July 8, 2013

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